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8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

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11 United States of America,

12 Plaintiff,

13 v.

14 State Farm Mutual Automobile Insurance
Co.; Irene Livingston; and Casjaye Vale
15 Livingston,

16 Defendants.
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Case No. _____

COMPLAINT

INTRODUCTION

1. The United States Department of Health and Human Services (“DHHS”) provides medical care through the Indian Health Service (“IHS”) for members of federally-recognized Indian tribes. Under 25 U.S.C. § 1621e and 42 U.S.C. §§ 2651-2653, DHHS has the right to recover for the cost of providing medical care to IHS beneficiaries from tortfeasors or their insurance companies when the tortfeasor caused the beneficiary’s injuries.

2. Gabriel Gruber, a member of a federally-recognized Indian tribe, was injured in an auto versus pedestrian accident on or about September 20, 2012, when he was struck by a car while walking along the side of the road.

3. Casjaye Vale Livingston’s negligence in operating a motor vehicle was the proximate cause of the accident.

4. The Defendant insurance company provided insurance that covered Ms. Livingston.

5. IHS has spent \$45,137.39 in providing, or paying for, medical care to Mr. Gruber for the injuries he suffered in the accident.

6. Although Defendants do not deny liability for the accident, to date IHS has not been reimbursed from the Defendant insurance company or from any other sources for the medical care Mr. Gruber received for the injuries he sustained in the accident.

7. DHHS brings this action to recover its costs in providing, or paying for, Mr. Gruber’s medical care.

PARTIES

8. Plaintiff is the United States of America (“United States”), on behalf of its agency the DHHS and its component agency the IHS. The IHS is responsible for providing federal health services to American Indians and Alaska Natives and is the principal federal health care provider for Indian people.

9. Defendant State Farm Mutual Automobile Insurance Company (“State Farm”) is an Illinois corporation and is licensed to provide insurance in Arizona.

1 10. Defendant Irene Livingston is a citizen and resident of Arizona. She is the owner
2 of the vehicle involved in the accident and the holder of the State Farm insurance policy
3 that insured the vehicle.

4 11. Defendant Casjaye Vale Livingston is a citizen and resident of Arizona. She is
5 related to Defendant Irene Livingston and, with Irene Livingston's permission, was driving
6 the vehicle involved in the accident.

7 **JURISDICTION AND VENUE**

8 12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
9 § 1345.

10 13. Venue is proper in the District Court of Arizona pursuant to 28 U.S.C. § 1391(b)
11 because a substantial part of the events giving rise to the claim occurred here and because
12 Defendants are subject to personal jurisdiction here. The accident that gave rise to
13 Defendants' liability took place in Sanders, Arizona. Also, Mr. Gruber received medical
14 treatment by various Arizona medical providers, including Puerco Valley Ambulance,
15 which is based in Sanders, Arizona; Flagstaff Emergency Physicians in Flagstaff, Arizona;
16 and Flagstaff Medical Center, also in Flagstaff, Arizona. Mr. Gruber's medical treatment,
and reimbursement, by IHS form the basis of Plaintiff's claim.

17 **ALLEGATIONS**

18 14. According to the police reports, on September 20, 2012, between 8:00 p.m. and
19 10:00 p.m., Mr. Gruber was intoxicated and walking with Brayannon Blackwater along
20 Navajo Route 2011 (N-2011) in Sanders, Arizona.

21 15. Casjaye Vale Livingston was driving a Cadillac Escalade with three passengers to
22 a high school football game when they passed Gabriel Gruber and Brayannon Blackwater
23 walking along the side of N-2011. Ms. Livingston and her passengers saw Mr. Gruber and
24 Ms. Blackwater and yelled at them, "get off the road!" Mr. Gruber yelled back at them.

25 16. After leaving the football game approximately 30 minutes later, Ms. Livingston
26 and her passengers again saw Mr. Gruber and Ms. Blackwater on the road and yelled at
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1 them once more. According to Mr. Gruber, he yelled back, exclaiming, "Don't scream at
2 us! Say it to my face. Don't just yell at someone and drive off!"

3 17. Ms. Livingston then turned around farther down the road and drove back in the
4 direction of Mr. Gruber. As she approached, Mr. Gruber ran at the truck and tried to jump
5 on the hood. Ms. Livingston swerved to avoid Mr. Gruber but struck him with the right
6 side passenger mirror.

7 18. The Apache County Sheriff's Office, which responded to the scene and
8 investigated the accident, determined that both parties were at fault.

9 19. After the accident, Mr. Gruber was airlifted to a hospital and received treatment for
10 his injuries.

11 20. Mr. Gruber is a member of the Navajo tribe, a federally-recognized Indian tribe.
12 Because Mr. Gruber is an Indian tribal member, his medical care was either provided or
13 covered by the IHS.

14 21. IHS's total costs for Mr. Gruber's care, including amounts paid to outside medical
15 providers, totaled \$45,137.39. Mr. Gruber's medical care was primarily provided by
16 Flagstaff Medical Center in Flagstaff, Arizona.

17 22. As the insurance company for the tortfeasor, State Farm does not dispute its
18 liability. State Farm offered to settle with Mr. Gruber for its policy limit of \$25,000, which
19 Mr. Gruber accepted.

20 23. DHHS, on behalf of IHS, sent notices to State Farm informing it that as the
21 insurance company of the tortfeasor, it is responsible for reimbursing IHS for the costs of
22 Mr. Gruber's medical care. To date, IHS has not been reimbursed by any of the
23 Defendants or from any other sources.

24 **COUNT ONE**

25 **(25 U.S.C. § 1621e)**

26 24. Plaintiff incorporates by reference the preceding paragraphs.

27 25. By virtue of the forgoing conduct, the United States retains the independent right
28 under 25 U.S.C. § 1621e, to recover from the Defendants the costs of medical treatment

IHS paid for or provided to Gabriel Gruber. Plaintiff also seeks attorneys' fees and costs in pursuing this action.

COUNT TWO

(Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653)

26. Plaintiff incorporates by reference the preceding paragraphs.

27. By virtue of the forgoing conduct, the United States retains the independent right under the Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653, to recover from the Defendants the value of all medical treatment that IHS paid for, or provided to, Gabriel Gruber.

COUNT THREE

(Unjust Enrichment)

28. Plaintiff incorporates by reference the preceding paragraphs.

29. Defendants were unjustly enriched by Plaintiff's payments for the medical care of Mr. Gruber. As Defendants are responsible for Mr. Gruber's medical care due to the negligence of Casjaye Vale Livingston, it would be unjust for Defendants to retain the benefit of IHS's coverage of Mr. Gruber's medical care without reimbursing IHS.

30. By virtue of the forgoing conduct, the United States is entitled to recover from the Defendants the costs of all medical treatment provided to Gabriel Gruber by IHS as a result of Casjaye Vale Livingston's negligence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment in an amount to be determined at trial as follows:

- a. Recovery of the costs of IHS's provision of medical care to Gabriel Gruber;
- b. Awarding Plaintiff attorneys' fees and costs in pursuing this action; and
- c. Awarding such other and further relief as this Court deems just, proper and equitable.

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1 Respectfully submitted this 10th of March, 2016.

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3 UNITED STATES OF AMERICA

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6 District of Arizona

7 s/ Matthew W. Drogemuller

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